

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT M., a student in the Owen J.	:	CIVIL ACTION
Roberts School District, by and	:	
through his parents and next friends,	:	
R.M. and D.M., as Class Representative	:	
on behalf of himself and otherwise	:	
similarly situated	:	
	:	
	:	
v.	:	
	:	
EUGENE W. HICKOK, JR., in his official	:	
capacity as Pennsylvania Secretary of	:	
Education and OWEN J. ROBERTS SCHOOL	:	
DISTRICT	:	NO. 98-4682

MEMORANDUM AND ORDER

Fullam, Sr. J.

June , 1999

Plaintiff Robert M. is a learning-disabled child, suing here "by and through his parents and next friends, R.M. and D.M." (hereinafter "plaintiffs"). They are suing the Pennsylvania Secretary of Education in his official capacity, and the Owen J. Roberts School District, alleging violations of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1415(I)(2) and (I)(3), and violations of their constitutional rights to due process.

Plaintiffs pursued their administrative remedies with the result that minor-plaintiff has been placed in a special program which is apparently satisfactory to all concerned, but plaintiffs were denied tuition-reimbursement for a private-school placement arranged by plaintiffs during the period before the

school district agreed to the placement which plaintiffs now find satisfactory.

The applicable statutes give plaintiffs the right of judicial review of the ultimate administrative decision; since disability is involved, plaintiffs' appeal has properly been taken to this court. But, in addition to seeking judicial review of the administrative decision denying their claim for tuition reimbursement, plaintiffs challenge the entire administrative process as a violation of their due process rights, and a violation of the IDEA. Plaintiffs filed their complaint in this action, but before it was served, filed an amended complaint, adding class-action allegations. By Memorandum and Order dated January 11, 1999, I dismissed the class action allegations, for various reasons (lack of numerosity, paucity of common issues, and doubts about adequacy of representation).

On April 14, 1999, plaintiffs filed a motion for leave to file a second amended complaint. Apparently unaware of this motion, the defendant Hickok (the Pennsylvania Secretary of Education), on April 15, 1999, filed a motion to dismiss for lack of subject-matter jurisdiction, and an alternative motion for summary judgment. The defendant school district has not filed any motions.

Since the proposed second amended complaint does not add anything of significance to the first amended complaint, and

since the issues raised by the defendant's motion to dismiss apply equally to both versions of the complaint, the motion for leave to amend will be granted, and the defendant's motion will be treated as applying to all pending versions of plaintiffs' complaint.

Defendant seeks dismissal of all claims against the defendant Hickok (the first and second counts of the second amended complaint) for lack of subject-matter jurisdiction, upon the interesting theory that since, in defendant's view, the complaint fails to allege valid claims which pass muster under Fed. R. Civ. P. 12(b)(6), it follows that there is no "case or controversy" between plaintiffs and the moving defendant, and the action should be dismissed for lack of subject matter jurisdiction. Needless to say, this Court plainly has jurisdiction to decide whether the complaint withstands dismissal under Rule 12(b)(6); the failure to plead a valid claim does not deprive the Court of subject-matter jurisdiction.

Moreover, since defendant's motion is accompanied by a substantial amount of evidentiary materials not included in plaintiffs' pleadings, only the alternative request for summary judgment will be considered.

Plaintiffs allege that the administrative scheme followed in Pennsylvania does not satisfy the requirements of the federal statute, and deprived them of due process of law.

Indeed, a fundamental flaw in plaintiffs' argument is the assumption that any inconsistencies between Pennsylvania's administrative scheme and the federal statute necessarily produce constitutional violations.

Everyone agrees that the federal statute, IDEA, contemplates a two-tier system of reviewing complaints about student-placement: a first tier at the level of the local educational institution, and an independent review at a higher level. See Carlisle Area School District v. Scott P., 62 F.3d 580, 533 (3d Cir. 1995). Plaintiffs insist that the final decision-maker, under the federal statute, must be a single individual, whereas, in Pennsylvania, the final review is by a three-member appellate panel. Plaintiffs also contend that, under the federal statute, parents are entitled to present additional evidence to the appellate decision-maker, whereas, in Pennsylvania, the appellate panels seldom, if ever, permit additional evidence. Plaintiffs also make much of the (alleged) fact that the decisions of the three-member appellate panels are always unanimous (only one dissenting opinion noted in several hundred cases). Among other things, plaintiffs seek an order from this Court requiring the defendant to see to it that members of the appellate review panels receive training in writing dissenting opinions.

In my view, none of plaintiffs' complaints establish

any constitutional violation. There is no assertion that plaintiffs ever sought to present any evidence which is not already in the record, or even that they have any such evidence to present today. Moreover, and of greater importance, they have the undoubted opportunity to include the claimed infirmities as part of the process of judicial review in this court.

The only genuine issue in this case is whether the defendant school district should be required to reimburse the amount plaintiffs spent for private placement during the period before the school district acquiesced in the present placement arrangements. So far as can be discerned from plaintiffs' pleadings and other submissions, the defendant Hickok can have no liability for such reimbursement. The only possible reason for retaining the defendant Hickok in this litigation would arise if it should appear that the administrative scheme in Pennsylvania requires modification in order to comply with the federal statute. But it is undisputed that Pennsylvania's plan has been reviewed and approved by the appropriate federal officials (until a 1997 amendment to the federal statute eliminated that requirement) and that Pennsylvania is in compliance with the periodic reporting mandates of the federal statute.

In short, all of plaintiffs' potentially valid claims are cognizable under the third count of the second amended complaint; the first two counts will therefore be dismissed.

An Order follows.

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DISTRICT	:	NO. 98-4682

ORDER

AND NOW, this day of June, 1999, IT IS ORDERED:

1. Plaintiffs' Motion for Leave to File a Seconded Amended Complaint is GRANTED. The second amended complaint is deemed filed, and challenged by the defendant Hickok's Motion to Dismiss.

2. The defendant Hickok's Motion to Dismiss, treated as a Motion for Summary Judgment under Fed. R. Civ. P. 56, is GRANTED. All claims against the defendant Hickok are DISMISSED WITH PREJUDICE.

3. All constitutional claims against the defendant School District are DISMISSED WITH PREJUDICE.

John P. Fullam, Sr. J.